

Parliam<sup>t</sup> in such case Requires; the said Master coming to Tryall in the Prov<sup>l</sup> Court, and it being acknowledged and given for Granted that there was Tobacco taken on Board before any other Bond was given than the Bond then produced in Court and shewed to the Jury, the only question then Remaining to be determin'd was whether that Bond was a sufficient Bond according to the Act of Parliament, which being a Question of Law ought to be Judged of by the Judges, but the Jury taking the s<sup>d</sup> Matter of Law vpon themselves found the s<sup>d</sup> Blackmore and his said ship, not guilty and consequently Judged the s<sup>d</sup> Bond to them produced to be a sufficient Bond in Law, for which Reason the s<sup>d</sup> Randolph Appealed to your Excell and Council and Assigned for Error the insufficiency of the s<sup>d</sup> Bond according to the Act of Parliam<sup>t</sup> vpon which your Ex<sup>cy</sup> and Council thought fit to Judge the s<sup>d</sup> Bond insufficient in Law and consequently to Reverse the Judgm<sup>t</sup> of the Provinciall Court whereby the said ship was cleared.

I am therefore of Opinion that vpon the Reversall of the Judgm<sup>t</sup> of the Provinciall Court for the Reason afores<sup>d</sup> the ship ought to be condemned, because that whensoever a Writ of Error is brought in a Superiour Court vpon a Judgm<sup>t</sup> given in an inferiour Court, if the Judgm<sup>t</sup> of the inferiour Court be Reversed for any Errors assigned then and in such Case the Superiour Court ought to give the same Judgm<sup>t</sup> as the inferiour Court ought to have given, if such Error had not happened; Now if the Error of Judging the s<sup>d</sup> Bond sufficient had not happened in the provinciall Court but that the s<sup>d</sup> Bond had been Judged there insufficient (as your Excell and Council adjudged it) then without all dispute they ought to have Condemned the Ship, consequently your Ex<sup>cy</sup> and Council having Judged the s<sup>d</sup> Bond insufficient, and the not doing so being the Error of the Provinciall Court, The Judgm<sup>t</sup> to be given by your Ex<sup>cy</sup> and Council (I humbly conceive) is that the ship be Condemned according to the directions of the Act of Parliam<sup>t</sup> and for any person to come now and Alledge in barr of such Judgment that there is Matter of fact to be still inquired into (viz<sup>t</sup> whether the said ship tooke in Tobacco before Bond given) is idle Forreign, and now too late to alledge, because it was given for Granted and allowed vpon the Tryall that Tobacco was taken on Board before any other bond was given but that bond which is now Judged insufficient, and the sufficiency of the Bond was the only thing insisted vpon in the provinciall Court, which being adjudged by your Ex<sup>cy</sup> and Council insufficient it must of Necessity follow that the Ship must be condemned, which is humbly offered to your Ex<sup>cy</sup> as the Opinion of

Yo<sup>r</sup> Ex<sup>ncies</sup> most humble and  
most obedient Servant  
Charles Carroll